

REMARKS

Claims 2-53 are pending in the application. Claims 2-53 have been rejected.

Claim 1 was previously cancelled. No amendments have been made to the claims.

The specification has been amended to add patent application serial numbers not available at the time of filing the application; no new matter has been added.

Rejection of Claims under 35 U.S.C. § 101

Claims 47 and 48 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. According to the Office Action, the claims are “directed to a signal and render it non-statutory.” (Office Action, page 1, paragraph 3.) Applicants respectfully traverse this rejection.

Applicants note that claims 47 and 48 are directed to functional descriptive material that has been encoded on a carrier wave. As noted in the Examination Guidelines for Computer-Related Inventions, “[w]hen functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases.” MPEP §2106, page 2100-12, emphasis added. Furthermore, “[c]laims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena... However, a signal claim directed to a practical application of electromagnetic energy is statutory regardless of its transitory nature.” MPEP §2106, page 2100-14, citing *O'Reilly v. Morse*, 56 U.S. (15 How) 62, 114-119 (1853) and *In re Breslow*, 616 F.2d 516, 519-21, 205 USPQ 221, 225-26 (CCPA 1980), emphasis added. Claims 47 and 48 are clearly directed to more than simply the physical characteristics of

a form of energy, as indicated by the description of the instructions that have been encoded on the carrier wave. Furthermore, a “data signal embodied in a carrier wave including instructions for performing an administrative action on a remote computing device in a remote dynamic computing environment” is a practical application of electromagnetic energy due to the encoding of the instructions, which include functional descriptive material, on the carrier wave. Accordingly, claims 47 and 48 recite statutory subject matter.

Rejection of Claims under 35 U.S.C. § 103

Claims 2-53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Skarbo, et al., U.S. Patent 5,805,886 (“Skarbo”) in view of Simmon, et al., U.S. Patent 6,507,868 (“Simmon”). Independent claim 2 claims an apparatus comprising the following limitation:

a configurable communication server capable of handling a communication with the communication channel by virtue of being capable of accessing information regarding the communication.

A configurable communication server is also substantially required by independent claims 21 and 34. The Office Action states that the above limitation is shown by Skarbo Fig. 2 and column 2, lines 35-52, although “Skarbo et al. fail to show the use of a communication server using a communication channel.” (See Office Action, page 2, paragraphs 6 and 7.) The cited portion of Skarbo states:

The present invention relates to a method for notifying a client application program of an event in a shared application program in a computer system. A client application program executing in the computer system registers a call-back function during startup to a shared service library. Thereafter, the shared application program senses the event and maps the event to one of a set of registered client application programs including the client application program. The shared application program notifies the shared service library, which then invokes the callback function of the

client application program such that the callback function passes a parameter for the event to the client application program. (Skarbo, column 2, lines 35-49).

Applicants can find no reference to a communication server in Skarbo, and particularly no reference to a *configurable* communication server, as recited in independent claims 2, 21, and 34. Furthermore, Applicants can find no reference to communication or to accessing information related to the communication, also as recited in independent claims 2, 21, and 34. Applicants respectfully submit that the method for notifying a client application program of an event in a shared application program in a computer system of Skarbo describes the client side of a client/server application, with no relevance to the server side. Events occurring in a shared application program on a single computer system are not necessarily related to communication, and particularly not necessarily related to communication with a communication server via a communication channel. As a result, Skarbo does not teach all limitations of the claimed invention.

The Office Action further states:

Simmon et al. show a plurality of communication servers that communicate using a plurality of wireless communication channels (abstract). It would have been obvious to one of ordinary skill in the art at the time of the Applicants' invention to combine the teachings of Skarbo et al. and Simmon et al. to create an apparatus for communicating using a communication server because it would provide a gateway that allows all nodes on the LAN access to its modems. (Office Action, page 2, paragraph 8).

Applicants respectfully request clarification of this statement. The relevance of a "gateway that allows all nodes on the LAN access to its modems" to the claimed invention is unclear. Nowhere do the claims recite a gateway, nodes on a LAN, or modems. Moreover, Simmon is not described as teaching either a configurable communication server or accessing information related to communication via a communication channel. Because all limitations of the claims are not shown by Skarbo,

Simmon, or the combination, claims 2, 21, and 34, and respective dependent claims 3-14, 22-33, and 35-48 are allowable for at least this reason.

A similar problem applies with the applicability of the combination of Skarbo and Simmon to the limitations of independent claims 15, 20, and 49, which specifically recite receiving an event from (or communicating with) a communication channel, determining a response by accessing information regarding the event (or the communicating), and performing the response. The combination of Skarbo and Simmon does not teach accessing information about the communication to determine a response. As a result, independent claim 15, its dependent claims 16-19, independent claim 20, independent claim 49 and its dependent claims 50-53 are allowable for at least the foregoing reason.

Furthermore, Applicants respectfully submit that a *prima facie* case of obviousness has not been established. In addition to the claim elements not taught or suggested by the cited references as described above, no showing has been made of a suggestion or motivation to combine Skarbo and Simmon. Neither reference suggests such a combination. The conclusory statement that Skarbo and Simmon “could” be combined is not sufficient to establish *prima facie* obviousness. See MPEP § 2143.01. Moreover, Applicants respectfully submit that no specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the combination, as required by, for example, *In re Rouffet*, 47 USPQ2d 1453 (Fed. Cir. 1998).

Combining the client of Skarbo with the communication server and wireless packet data communication network of Simmon would not produce the features or advantages of the claimed invention. As previously mentioned, Skarbo appears to be

concerned primarily with the client side of a client/server relationship, and Simmon does not teach all elements of the claimed communication server. In particular, this combination does not teach the configurability of the communication server or its ability to handle communication by virtue of accessing information about the communication.

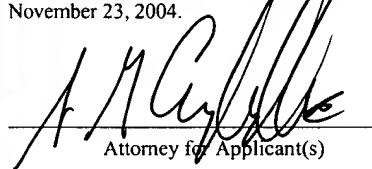
Furthermore, neither Skarbo nor Simmon shows, teaches, or suggest the problems addressed by the claimed invention. The references fail to acknowledge the special problems encountered in configuring a communication server to communicate via different types of communication channels or using different sets of commands and/or events for a given type of communication channel. Only Simmon deals with communication servers, and the communication servers described therein are written specifically to operate in conformance with a customized protocol, a pre-determined set of commands, and a customized user input device and user interface. The claimed invention, in contrast, enables the communication server to be configured to adapt to different types of communication channels, commands, and events.

Accordingly, Applicants respectfully submit that independent claims 2, 15, 20, 21, 34, and 49 are allowable over the combination of Skarbo and Simmon, taken alone or in combination. Claims 3-14, 16-19, 22-33, 35-48, and 50-53 depend from claims 2, 15, 21, 34, and 49, respectively, and are also allowable for at least the foregoing reasons.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5084.

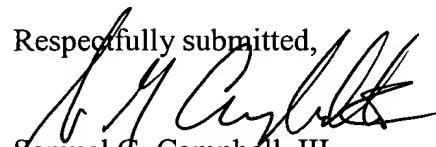
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11/23/04
Date of Signature

Respectfully submitted,



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